

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SAMUEL ZAMORA,

Plaintiff

v.

C.A. No.: 5:21-cv-836

DANIEL D. PHILLIPS, INC.,
D/B/A MISSION INVESTIGATIONS,
and, DANIEL D. PHILLIPS,

Defendants.

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COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, SAMUEL ZAMORA, by and through his undersigned counsel, sues Defendants, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, and DANIEL D. PHILLIPS, and in support thereof states as follows:

BACKGROUND FACTS

1. Plaintiff, SAMUEL ZAMORA, is an individual residing in Dallas County, Texas.
2. In 2000, Plaintiff, SAMUEL ZAMORA, began working for Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, as a private investigator at the hourly rate of \$30.00 per hour. In January of 2020, Plaintiff's hourly rate was changed to \$33.00 per hour.
3. Plaintiff's duties included the regular and recurring use of the internet, email and telephones to communicate with, and provide reports to, Defendants' customers located outside the state of Texas.

4. Plaintiff regularly provided verbal and written reports to Defendant's customers who were outside of the state of Texas via email and telephone. Such reports included information that was directly related to Plaintiff's investigative activities.

5. Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, operates a private investigation business in Bexar County, Texas.

6. Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, has employees subject to the provisions of 29 U.S.C. § 206 in the facility where Plaintiff was employed.

7. In the course of conducting his work, Plaintiff handled goods and products that were made for, or moving in, interstate commerce.

8. Defendant, DANIEL D. PHILLIPS, is an individual residing in Comal County, Texas, who at all times relevant to this matter, acted directly or indirectly in the interest of Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, in relationship to Plaintiff.

9. Defendant, DANIEL D. PHILLIPS, is an owner of Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS.

10. Defendants, DANIEL D. PHILLIPS, had knowledge of Plaintiff's work and accepted the benefits of Plaintiff's work.

11. At all times material to this Complaint, Defendants were the employers of the Plaintiff, and as a matter of economic reality, Plaintiff was dependent upon Defendants for his employment.

UNPAID OVERTIME WAGES UNDER FLSA

12. This is an action for overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*

13. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and by 29 U.S.C. § 216(b).

14. Venue is proper in this district under 28 U.S.C. § 1391.

15. Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, is a corporation formed and existing under the laws of the State of Texas and maintains offices in Bexar County, Texas.

16. Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, has employees subject to the provisions of 29 U.S.C. § 206 in the facility where Plaintiff was employed.

17. At all times material to this complaint, Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, employed two or more employees and had an annual dollar volume of sales or business done of at least \$500,000.00.

18. At all times material to this complaint, Defendant, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, was an enterprise engaged in interstate commerce, operating a business engaged in commerce or in the production of goods for commerce as defined by § 3(r) and 3(s) of the Act, 29 U.S.C. §§ 203(r)-(s).

19. Plaintiff was individually engaged in commerce and produced goods for commerce and his work was directly and vitally related to the functioning of Defendants'

business activities. Thus, throughout his employment, Plaintiff was individually covered under the FLSA.

20. At all times material to this complaint, Defendant, DANIEL D. PHILLIPS, owned and operated DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS in Bexar County, Texas, and Plaintiff's claims herein arose in Bexar County, Texas.

21. At all times material hereto, Defendant, DANIEL D. PHILLIPS, as an agent of DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS (1) possessed the power to hire and fire Plaintiff, (2) supervised and controlled Plaintiff's work schedule or conditions of employment, (3) determined the Plaintiff's rate and method of payment, (4) maintained Plaintiff's employment records; and, (5) possessed the decision making power to pay overtime owed to Plaintiff and other employees. Thus, Defendant, DANIEL D. PHILLIPS, is an "employer" as defined by 29 U.S.C. § 203(d).

22. Plaintiff worked for Defendants from 2000 until the present, but was not paid one and one half-times his regular rate for all hours worked in excess of 40 during the workweek in accordance with the FLSA. Defendants paid Plaintiff his regular hourly rate for each hour worked, but did not pay Plaintiff the additional half-time premium as required under the FLSA. Thus, Plaintiff is entitled to recover the additional half-time premium owed for all hours over 40 worked in each workweek.

23. Defendants failed to act in good faith and/or reasonably in their efforts to comply with the FLSA; thus, Plaintiff is entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

24. Defendants have willfully failed to pay Plaintiff overtime wages.

Defendants either knew, or showed reckless disregard for the matter of whether their conduct was prohibited by the FLSA and failed to act diligently with regard to their obligations as employers under the FLSA.

25. As a result of Defendant's unlawful conduct, Plaintiff, SAMUEL ZAMORA, is entitled to actual and compensatory damages, including the amount of overtime wages which were not paid, but should have been paid.

26. Plaintiff is entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, SAMUEL ZAMORA, demand Judgment, jointly and severally, against Defendants, DANIEL D. PHILLIPS, INC., D/B/A MISSION INVESTIGATIONS, and DANIEL D. PHILLIPS, for the following:

- a. Unpaid overtime wages found to be due and owing;
- b. An additional amount equal to the amount of unpaid overtime wages found to be due and owing as liquidated damages;
- c. Prejudgment interest in the event liquidated damages are not awarded;
- d. Reasonable attorneys' fees, costs, expert fees, mediator fees and out of pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure; and,
- e. For any such other relief as the Court may find proper, whether at law or in equity.

JURY TRIAL DEMAND

Plaintiff, SAMUEL ZAMORA, demands a jury trial on all issues so triable.

Respectfully submitted September 2, 2021.

ROSS • SCALISE LAW GROUP



CHARLES L. SCALISE
Texas Bar No. 24064621
Attorney-in-Charge
1104 San Antonio Street
Austin, Texas 78701
(512) 474-7677 Telephone
(512) 474-5306 Facsimile
Charles@rosslawgroup.com
Attorneys for Plaintiff